

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

AARON HICKS,

Plaintiff,

v.

ONE TECHNOLOGIES, LLC d/b/a
FREESCORE360.COM, a Texas limited
liability company; and DOES 1-100, inclusive,

Defendant.

Case No. 3:20-cv-03540-K

DEFENDANT ONE TECHNOLOGIES, LLC'S ANSWER TO COMPLAINT

Defendant One Technologies, LLC hereby answers plaintiff's complaint, and denies all allegations unless expressly admitted below:

1. One Technologies denies the allegations in Paragraph 1 of the Complaint, except that One Technologies admits only that plaintiff purports to quote the cited statute.
2. One Technologies denies the allegations in Paragraph 2 of the Complaint, except that One Technologies admits only that plaintiff purports to quote the cited statute.
3. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Complaint and therefore denies them.
4. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4 of the Complaint and therefore denies them.
5. One Technologies denies the allegations in Paragraph 5 of the Complaint, except that One Technologies admits only that plaintiff purports to bring this action against One Technologies based on twenty-five emails purportedly allegedly sent in violation of Cal. Bus. &

Prof. Code§ 17529.5 (“Section 17529.5”). One Technologies denies that it violated any law, or that it injured plaintiff by reason of plaintiff’s allegations in his complaint.

6. One Technologies denies the allegations in Paragraph 6 of the Complaint.

7. One Technologies denies the allegations in Paragraph 7 of the Complaint.

8. One Technologies denies the allegations in Paragraph 8 of the Complaint.

9. One Technologies denies the allegations in Paragraph 9 of the Complaint.

10. One Technologies denies the allegations in Paragraph 10 of the Complaint.

11. One Technologies denies the allegations in Paragraph 11 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to whether the emails at issue were sent to a California e-mail address and therefore denies them.

12. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12 of the Complaint and therefore denies them.

13. One Technologies denies the allegations in Paragraph 13 of the Complaint.

14. One Technologies denies the allegations in Paragraph 14 of the Complaint, except that One Technologies admits only that plaintiff purports to seeks statutory damages. One Technologies denies that plaintiff is entitled to statutory or any other damages by reason of the allegations in his complaint.

15. One Technologies denies the allegations in Paragraph 15 of the Complaint.

16. One Technologies denies the allegations in Paragraph 16 of the Complaint.

17. One Technologies denies the allegations in Paragraph 17 of the Complaint.

18. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 of the Complaint and therefore denies them.

19. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19 of the Complaint and therefore denies them.

20. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of the Complaint and therefore denies them.

21. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 of the Complaint and therefore denies them.

22. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22 of the Complaint and therefore denies them.

23. One Technologies denies the allegations in Paragraph 23 of the Complaint.

24. One Technologies denies the allegations in Paragraph 24 of the Complaint, except One Technologies admits only that its principal place of business is 8144 Walnut Hill LN Ste. 600, Dallas, TX 75231-4345.

25. One Technologies denies the allegations in Paragraph 25 of the Complaint, except that One Technologies admits only that it is the registrant of the domain name freescore360.com.

26. One Technologies denies the allegations in Paragraph 26 of the Complaint, except that One Technologies admits only that it has made sales to consumers located in California.

27. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 27 of the complaint and therefore denies them.

28. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28 of the Complaint and therefore denies them.

29. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 of the Complaint and therefore denies them. One

Technologies denies all allegations of wrongdoing to the extent such allegations are made against it.

30. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 of the Complaint and therefore denies them. One Technologies denies all allegations of wrongdoing to the extent such allegations are made against it.

31. One Technologies denies the allegations in Paragraph 31 of the Complaint, except that One Technologies does not currently contest that courts located in Dallas County, Texas, may exercise personal jurisdiction over One Technologies for purposes of this action only.

32. One Technologies denies the allegations in Paragraph 32 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations that plaintiff is a California resident.

33. One Technologies denies the allegations in Paragraph 33 of the Complaint, except that One Technologies admits only that it has made sales to consumers located in California.

34. One Technologies denies the allegations in Paragraph 34 of the Complaint. One Technologies alleges that although the amount in controversy exceeds \$25,000, plaintiff is not entitled to any of the monetary or other relief he seeks.

35. One Technologies denies the allegations in Paragraph 35 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

36. One Technologies denies the allegations in Paragraph 36 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth

of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

37. One Technologies denies the allegations in Paragraph 37 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

38. One Technologies denies the allegations in Paragraph 38 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

39. One Technologies denies the allegations in Paragraph 39 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

40. One Technologies denies the allegations in Paragraph 40 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

41. One Technologies denies the allegations in Paragraph 41 of the Complaint.

42. One Technologies denies the allegations in Paragraph 42 of the Complaint, except that One Technologies admits only that plaintiff purports to quote from the cited case and statute.

43. One Technologies denies the allegations in Paragraph 43 of the Complaint, except that One Technologies admits only that plaintiff purports to quote from the cited case.

44. One Technologies denies the allegations in Paragraph 44 of the Complaint, except that One Technologies admits only that plaintiff purports to quote from the cited case.

45. One Technologies denies the allegations in Paragraph 45 of the Complaint, except that One Technologies admits only that plaintiff purports to allege a tort claim by this action. One Technologies denies all allegations of wrongdoing to the extent such allegations are made against it.

46. One Technologies incorporates by reference its responses to the preceding paragraphs of the complaint.

47. One Technologies denies the allegations in Paragraph 47 of the Complaint.

48. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48 of the Complaint and therefore denies them.

49. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 49 of the Complaint and therefore denies them.

50. One Technologies admits the allegation in Paragraph 50 of the Complaint.

51. One Technologies denies the allegations in Paragraph 51 of the Complaint.

52. One Technologies denies the allegations in Paragraph 52 of the Complaint.

53. One Technologies denies the allegations in Paragraph 53 of the Complaint.

54. One Technologies denies the allegations in Paragraph 54 of the Complaint.

55. One Technologies denies the allegations in Paragraph 55 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute.

56. One Technologies denies the allegations in Paragraph 56 of the Complaint.

57. One Technologies denies the allegations in Paragraph 57 of the Complaint.

58. One Technologies denies the allegations in Paragraph 58 of the Complaint.

59. One Technologies denies the allegations in Paragraph 59 of the Complaint, except that One Technologies admits only that plaintiff purposes to cite the material alleged in paragraph 59 of the Complaint.

60. One Technologies denies the allegations in Paragraph 60 of the Complaint.

61. One Technologies denies the allegations in Paragraph 61 of the Complaint, except that One Technologies admits only that plaintiff does not bring any claims under the federal CAN-SPAM Act; and that plaintiff purports to characterize the material alleged in paragraph 61 of the complaint.

62. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62 and therefore denies them.

63. One Technologies denies the allegations in Paragraph 63 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

64. One Technologies denies the allegations in Paragraph 64 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

65. One Technologies denies the allegations in Paragraph 65 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

66. One Technologies denies the allegations in Paragraph 66 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

67. One Technologies denies the allegations in Paragraph 67 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

68. One Technologies denies the allegations in Paragraph 68 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

69. One Technologies denies the allegations in Paragraph 69 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

70. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 70 of the Complaint and therefore denies them.

71. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71 of the Complaint and therefore denies them.

72. One Technologies denies the allegations in Paragraph 72 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth

of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

73. One Technologies denies the allegations in Paragraph 73 of the Complaint.

74. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 74 of the Complaint and therefore denies them.

75. One Technologies denies the allegations in Paragraph 75 of the Complaint.

76. One Technologies denies the allegations in Paragraph 76 of the Complaint.

77. One Technologies denies the allegations in Paragraph 77 of the Complaint.

78. One Technologies denies the allegations in Paragraph 78 of the Complaint.

79. One Technologies denies the allegations in Paragraph 79 of the Complaint.

80. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 80 of the Complaint and therefore denies them.

81. One Technologies denies the allegations in Paragraph 81 of the Complaint.

82. One Technologies denies the allegations in Paragraph 82 of the Complaint.

83. One Technologies denies the allegations in Paragraph 83 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute.

84. One Technologies denies the allegations in Paragraph 84 of the Complaint.

85. One Technologies denies the allegations in Paragraph 85 of the Complaint.

86. One Technologies denies the allegations in Paragraph 86 of the Complaint.

87. One Technologies denies the allegations in Paragraph 87 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

88. One Technologies denies the allegations in Paragraph 88 of the Complaint.

89. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 89 of the Complaint and therefore denies them.

90. One Technologies denies the allegations in Paragraph 90 of the Complaint, except One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence and therefore denies those allegations for lack of knowledge.

91. One Technologies denies the allegations in Paragraph 91 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited case.

92. One Technologies denies the allegations in Paragraph 92 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute.

93. The allegations in Paragraph 93 of the Complaint are vague. One Technologies denies them to the extent it understands the allegations.

94. One Technologies denies the allegations in Paragraph 94 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute and cases.

95. One Technologies denies the allegations in Paragraph 95 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited case.

96. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 96 of the Complaint and therefore denies them.

97. The allegations in Paragraph 97 of the Complaint are vague. One Technologies denies them to the extent it understands the allegations.

98. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 98 of the Complaint and therefore denies them.

99. One Technologies denies the allegations in Paragraph 99 of the Complaint.

100. One Technologies denies the allegations in Paragraph 100 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute.

101. One Technologies denies the allegations in Paragraph 101 of the Complaint.

102. One Technologies denies the allegations in Paragraph 102 of the Complaint.

103. One Technologies denies the allegations in Paragraph 103 of the Complaint.

104. One Technologies denies the allegations in Paragraph 104 of the Complaint.

105. One Technologies admits the allegation in Paragraph 105 of the Complaint.

106. One Technologies denies the allegations in Paragraph 106 of the Complaint.

107. One Technologies denies the allegations in Paragraph 107 of the Complaint, except that One Technologies admits only that plaintiff purports to quote and characterize the cited statutes.

108. One Technologies denies the allegations in Paragraph 108 of the Complaint, except that One Technologies admits only that plaintiff purports to quote the cited statute and case.

109. One Technologies denies the allegations in Paragraph 109 of the Complaint, except that One Technologies admits only that plaintiff purports to quote and characterize the cited case.

110. One Technologies denies the allegations in Paragraph 110 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

111. One Technologies denies the allegations in Paragraph 111 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in the first sentence and therefore denies those allegations for lack of knowledge.

112. One Technologies denies the allegations in Paragraph 112 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

113. One Technologies denies the allegations in Paragraph 113 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

114. One Technologies denies the allegations in Paragraph 114 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute.

115. One Technologies denies the allegations in Paragraph 115 of the Complaint, except that: (a) One Technologies admits only that plaintiff purports to characterize the cited statute; and (b) One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

116. One Technologies denies the allegations in Paragraph 116 of the Complaint.

117. One Technologies denies the allegations in Paragraph 117 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited statute and case.

118. One Technologies denies the allegations in Paragraph 118 of the Complaint, except that One Technologies admits only that plaintiff does not seek actual damages in this lawsuit.

119. One Technologies denies the allegations in Paragraph 119 of the Complaint, except that One Technologies lacks knowledge or information sufficient to form a belief about the truth

of the allegations related to what “Plaintiff is informed and believes” and therefore denies those allegations for lack of knowledge.

120. One Technologies incorporates by reference its responses to the preceding paragraphs of the complaint.

121. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 121 of the Complaint and therefore denies them.

122. One Technologies denies the allegations in Paragraph 122 of the Complaint.

123. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 123 of the Complaint and therefore denies those allegations.

124. One Technologies denies the allegations in Paragraph 124 of the Complaint, except that One Technologies admits only that plaintiff purports to characterize the cited case.

125. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 125 of the Complaint and therefore denies them.

126. One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 126 of the Complaint and therefore denies them.

127. One Technologies denies the allegations in Paragraph 127 of the Complaint.

128. One Technologies denies the allegations in Paragraph 128 of the Complaint.

129. One Technologies denies the allegations in Paragraph 129 of the Complaint, except that One Technologies admits only that violations of Section 17529.5 may be punishable by liquidated damages of up to \$1,000 per email. One Technologies denies that it violated any law, and that it injured plaintiff by reason of plaintiff’s allegations in his Complaint.

130. One Technologies denies the allegations in Paragraph 130 of the Complaint, except One Technologies admits only that plaintiff seeks to recover his reasonable attorneys' fees by his complaint. One Technologies denies that it violated any law, that it injured plaintiff by reason of plaintiff's allegations in his Complaint, and that it allegedly damaged plaintiff by reason of plaintiff's allegations in his Complaint.

131. One Technologies denies the allegations in Paragraph 131 of the Complaint, except that One Technologies admits only that plaintiff seeks to recover his reasonable attorneys' fees by his complaint. One Technologies denies that it violated any law, that it injured plaintiff by reason of plaintiff's allegations in his Complaint, and that it allegedly damaged plaintiff by reason of plaintiff's allegations in his Complaint.

132. One Technologies denies the allegations in Paragraph 132 of the Complaint.

*** In response to the unnumbered section entitled "Prayer for Relief," One Technologies states that it denies that plaintiff is entitled to any of the relief he seeks by reason of the allegations in plaintiff's Complaint.

AFFIRMATIVE DEFENSES

One Technologies's affirmative defenses set forth herein are based solely on plaintiff's allegations in his complaint. One Technologies asserts the affirmative defenses set forth below, each as separate and distinct affirmative defenses to plaintiff's alleged causes of action. Insofar as any of the following expresses denial of an element of any claim alleged against One Technologies, that denial does not indicate that plaintiff is relieved of his burden to prove each and every element of any such claim or that One Technologies assumed any burden of proof. One Technologies hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during, for example, pre-trial proceedings in this case, and hereby reserves

the right to amend this answer and offer or assert additional defenses that cannot now be articulated because, among other reasons, defendant has not completed discovery.

1. One Technologies established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that plaintiff claims are in violation of California Business and Professions Code § 17529.5.

2. Some or all of plaintiff's claims are barred by the applicable statute of limitations under California Code of Civil Procedure § 340(a).

3. Plaintiff consented to receive some or all of the emails over which he is suing.

4. Plaintiff lacks standing at least because California's Proposition 64 requires that a private person have suffered injury in fact and have lost money or property in order to sue to enforce California's unfair competition and false advertising laws. Plaintiff has sued under Business and Professions Code § 17529.5, which falls under the False Advertising Chapter of the Business and Professions Code and is part of California's false advertising laws. Plaintiff cannot show that he has suffered an injury in fact and lost money or property as a result of the alleged emails.

5. Some or all of plaintiff's claims are barred by the doctrine of unclean hands.

6. Plaintiff failed to mitigate his damages (if any).

7. Plaintiff's claims for violations of California Business and Professions Code § 17529.1 *et seq.* are barred because the statute is unconstitutional to the extent it is applied in a manner that violates any constitutional protection, including without limitation, the due process clause of the Fourteenth Amendment to the United States Constitution, the excessive fines clause

of the Eighth Amendment to the United States Constitution, and the constitutional right of free speech.

8. Some or all of plaintiff's claims are preempted by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §§ 7701 *et seq.*

One Technologies's affirmative defenses set forth herein are based solely on plaintiff's allegations in his complaint which does not describe the events and claims therein with sufficient particularity to enable One Technologies to determine all of the defenses which may exist to such claims. Without these and other details, One Technologies cannot respond further to plaintiff's complaint. Therefore, One Technologies reserves the right to assert and rely upon additional defenses that become available or apparent during the pendency of this action, and to modify the affirmative defenses set forth herein as additional information is obtained by One Technologies.

WHEREFORE, having fully answered plaintiff's complaint, One Technologies prays that:

- A. Judgment be rendered in favor of One Technologies;
- B. The above entitled action be dismissed in its entirety with prejudice;
- C. Plaintiff take nothing by reason of his complaint against One Technologies;
- D. That One Technologies be awarded its costs of suit incurred in defense of this action; and
- E. For such other and further relief, at law and/or in equity, in One Technologies' favor as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, One Technologies demands a trial by jury on all issues so triable.

Dated: January 11, 2021

Respectfully submitted,

/s/ Ari N. Rothman

Ari N. Rothman (*pro hac vice*)

Shahin O Rothermel (*pro hac vice*)

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**ATTORNEYS FOR DEFENDANT ONE
TECHNOLOGIES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2021, a true and correct copy of this document was filed and served on all counsel of record *via* the Court's CM/ECF system.

/s/ Jonathan R. Childers

Jonathan R. Childers